



Commission for
Communications Regulation

Decision Notice

Implementation of Partial Private Circuits Pricing

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Contents

1	Background	2
2	Legislation	4
3	Pricing	6
3.1	PAPER MIGRATION TO PARTIAL PRIVATE CIRCUITS	7
3.2	INITIAL BULK MIGRATION TO PARTIAL PRIVATE CIRCUITS.....	8
	Appendix - List of Directions	9

1 Background

Decision Notice D10/02 directed eircom to propose, by the end of August 2002, a product description for Partial Private Circuits. This was to be developed and agreed in the industry forum which was set up for this purpose.

This direction was made as a result of the interest which many operators expressed both in their responses to the Consultation Paper 01/47¹ and also Consultation Paper 02/27² in a wholesale data tail product known as a Partial Private Circuit. Given the positive reactions from respondents to these papers, the ODTR directed that eircom offer proposals by the end of August and that a forum be established to agree the product description and technical and operational aspects necessary for implementation. A target completion date was established of 20th December 2002.

The forum convened on the 9th September 2002, and met regularly achieving significant progress. A target date for freezing of the product description was set for 25th October 2002. However at this date it became apparent that eircom and the other licensed operators (OLOs) were not in a position to agree the product description. Repeated attempts by the forum to freeze the product failed due to lack of agreement between eircom and the OLOs. Therefore ComReg, in Direction 3.1 of Decision Notice D17/02, directed that the product description be frozen on 13th December 2002.

Also in Direction 3.2 of Decision Notice D17/02, ComReg directed eircom to work with the industry to develop an Inter Operator Process Manual by 7th February 2003 and to produce a draft set of Terms and Conditions by 7th February 2003 to support the frozen product description. As a result of a considerable amount of co-operation within the industry and a large amount of resource expended by the industry, The Inter Operator Process Manual was completed on 31st January 2003 and the Terms and Conditions were completed on 6th February 2003.

In Direction 3.4.1 of Decision Notice D17/02, ComReg directed eircom to provide to the Commission a fully cost-oriented pricing submission for the PPC product elements of connection, disconnection and recurring charges by 7th February 2003. Eircom were additionally directed that the pricing submission should be computed on the basis of Long Run Incremental Cost and should be consistent with the computation of conveyance rates. In addition, in Direction 3.4.2, ComReg directed eircom to provide to the Commission a fully cost oriented pricing submission, with full justification for all other PPC process elements by 14th February 2003.

Finally, in Direction 3.5.1 of Decision Notice D17/02, ComReg directed eircom to submit a draft Reference Interconnect Offer Service Schedule for the Wholesale Interconnect PPC product by 14th February 2003. ComReg also directed eircom, in Direction 3.5.2, to offer a Wholesale Interconnect PPC product with associated processes, terms and conditions and prices by 15th February 2003.

¹ 01/47 The Internet in Ireland: Communications, Transmission, and Delivery Issues July 2001

² 02/27 Eircom's Reference Interconnect Offer March 2002

In addition, ComReg undertook an intensive period of consultation with industry on the appropriate price structure that should be used when developing charges for PPCs. Following the publication of D17/02, ComReg met with eircom to discuss the appropriate pricing principles and structure that should be applied to PPCs. Agreement of the appropriate principles and structure was achieved at this meeting and these are set out in Information Notice 02/118³.

³ 02/118 Implementation of Partial Private Circuits – Pricing Principles and Structure December 2002

2 Legislation

Both EU and Irish legislation recognise that, in the interests of developing and sustaining competition in the telecommunications sector, the ability of new entrants to the market to interconnect with the network of an incumbent operator is essential.

The most relevant legislative provisions in relation to interconnection are:-

- *Council Directive 97/33/EC on interconnection in telecommunications with regard to ensuring universal service and interoperability through application of the principles of the Open Network Provision (ONP (“the Directive”);, and*
- *The European Communities (Interconnection in Telecommunication) Regulations, 1998, SI No. 15 of 1998, transposing the above Directive. (“the Regulations”)*

Under the above legislation, a telecommunications industry operator providing fixed public telephone networks and designated as having Significant Market Power (“SMP”) in that market is required to publish a Reference Interconnect Offer (“RIO”). ComReg may direct changes to be made to the RIO.

eircom as an SMP operator in the public fixed telephony services and networks market is obliged to publish a RIO under Regulation 8 of the Regulations and ComReg has the power to direct *eircom* to justify its RIO and where appropriate, direct that the RIO to be adjusted so as to ensure transparency and cost-orientation. Pursuant to Regulation 8 (10), ComReg may require that changes to the RIO be retrospective in effect to the date of introduction of those changes in the RIO. ComReg also has the power under Regulation 10 (3) to intervene on its own initiative to “specify issues which shall be included in an interconnection agreement or to lay down specific conditions to be observed by one or more parties to such an agreement.”

Regulation 10(5) provides that the conditions set or the changes directed by ComReg under Regulation 10(3) may include amongst other things, conditions designed to ensure effective competition, technical conditions, tariffs and supply and usage conditions. Regulation 10(6) allows ComReg at any time on its own initiative to set the period within which negotiations on interconnection shall be completed and provides that ComReg may take steps to conclude an agreement if not reached within the period set under procedures laid down by ComReg. In exercising its functions under the Regulations, Regulation 10(1) requires ComReg to encourage and secure adequate interconnection in the interests of all users in a manner that promotes economic efficiency and gives the maximum benefit to users. ComReg must at the same time have regard to a number of factors including the need to stimulate a competitive market in telecommunications services, the need to ensure satisfactory communications for users and the principles of non-discrimination and proportionality.

All those negotiating interconnection must do so in good faith but the Directive and Regulations place special obligations on an operator who is designated by ComReg as having SMP in the market for fixed telephony networks and services. These include the obligations that:-

Implementation of Partial Private Circuits Pricing

- Interconnection charges follow the principles of transparency, non-discrimination and cost-orientation;
- Charges be justified and adjusted where they are not in compliance with these principles. The burden of proof lies on the organisation providing interconnection; and
- A RIO based on market needs be published (to which the Commission may direct changes)

eircom is the only operator to have been designated as having SMP in the relevant market.

3 Pricing

The ODTR wrote to eircom on the 25th November 2002 requesting a pricing submission for the PPC product from eircom by the 18th December 2002. This was in line with the date proposed by eircom in their project plan dated 4th November 2002. The date of 18th December 2002 was subject to an early product freeze. As ultimately the product was only frozen on 13th December 2002, ComReg considered it appropriate to revise the deadline for a cost-oriented pricing submission to 7th February 2003 for the PPC product elements of connection, disconnection and recurring charges and to 14th February 2003 for all other process elements. ComReg also directed eircom to submit prices for the product elements on the basis of Long Run Incremental Cost, consistent with the computation of conveyance rates.

ComReg received the eircom pricing submission for the elements of connection, disconnection and recurring charges for the Partial Private Circuits product on 10th February 2003. ComReg's initial review of eircom's price submission for CSH and ISH has resulted in ComReg deeming the prices to be non-compliant with Direction 3.4.1 of Decision Notice D17/02. The method used in the pricing submission was based on removing certain elements from the current CSI price, as published in eircom's Reference Interconnect Offer, and in ComReg's view this does not derive an appropriate cost oriented price computed on a LRIC basis that is consistent with the computation of conveyance rates. This must be correct as the current CSI rates were not themselves set on a LRIC basis consistent with the computation of conveyance rates. Therefore removing particular elements does not alter the basis of deriving the costs of the remaining elements. The same statement is equally true in the case of ISH. ComReg's initial review of the End User Links has also resulted in ComReg deeming the prices to be non-compliant with Direction 3.4.1 of Decision Notice D17/02. ComReg's review has reached a number of 'dead-ends' regarding source documents pertinent to cost elements and therefore eircom has not demonstrated that the prices are cost oriented and computed on a LRIC basis consistent with the computation of conveyance rates.

ComReg views this as a serious breach by eircom of D17/02 and given the potential impact on the sector of delays in introducing this product, is now exercising its powers to intervene on its own initiative in this matter.

ComReg believes that Partial Private Circuits are vital to the further liberalisation of the market in Ireland. The failure of eircom to comply with D17/02 cannot be allowed to continue to delay the introduction of this important service, nor can it be allowed to delay the financial benefits that should accrue to OLOs following the introduction of the service. Therefore ComReg is making the following directions:

Direction 3.0.1

The Commission for Communications Regulation directs eircom to remedy the breach of Direction 3.4.1 of Decision Notice D17/02 as a matter of urgency by resubmitting its pricing submission for the elements of connection, disconnection and recurring charges for the Partial Private Circuits product and demonstrating to the Commission for Communications Regulation by 10th March 2003 that its prices for PPCs are fully cost justified on a LRIC basis and are consistent with the computation of conveyance rates.

Direction 3.0.2

The Commission for Communications Regulation directs eircom to make available sufficient resources during the next three weeks up to 10th March 2003 to support the Commission during its investigation into the eircom prices for Partial Private Circuits.

Should eircom fail to justify the cost orientation of its prices within this period, then ComReg will have to consider further action. This may include the setting of interim prices and/or the setting of a single date from which the charging of all circuits to be migrated to PPCs will take effect.

3.1 Paper Migration to Partial Private Circuits

The paper migration to Partial Private Circuits is a migration process where no physical engineering work is required in order to achieve the migration to the Partial Private Circuit product. The only requirements therefore, are to update the records and billing information by both the Other Licensed Operators and eircom, (i.e. change of circuit designations and billing class).

In order to ensure that the Other Licensed Operators are not penalised for the eircom breach of Direction 3.4.1 in D17/02, ComReg is exercising its powers so that paper migration benefits will accrue to the OLOs as if the product launch had not been delayed. To explain this further, the actual benefit will accrue to the OLOs on the date that the Order is placed plus 7 working days minus X. Where 7 working days is the Order Handling lead time and where X is defined as the number of days from 17th February 2003, (when the product would have been available under D17/02) to the actual date on which the product becomes available.

Direction 3.1.1

The Commission for Communications Regulation directs eircom to effect pricing on circuits migrated under the paper migration process on a date (X – 7) days prior to receipt of the migration order. X being defined as the number of days from 17th February 2003 to the actual date on which an appropriately priced product becomes available.

3.2 Initial Bulk Migration to Partial Private Circuits

The initial bulk migration is where an Other Licensed Operator seeks to migrate multiple circuits as a single order. The circuits that may be migrated as part of an initial bulk migration includes those eligible orders which have been placed, but are undelivered. Bulk migrations may require physical engineering work and/or just a paper re-designation as described in section 3.1 above.

In order to ensure that the Other Licensed Operators are not penalised for the eircom breach of Direction 3.4.1 in D17/02, ComReg is exercising its powers to ensure that the benefits accrue to the OLO in line with the original product launch date and provisions. The existing provisions allow benefits to accrue in accordance with implementation dates in agreed or directed project plans. In the light of the delay in introduction of the product and the consequent delay in planning and agreement or direction of migration implementation dates, ComReg now directs that the benefit shall accrue as per the finally agreed or directed project plan minus X days, (where X is calculated as in 3.1 above).

Direction 3.2.1

The Commission for Communications Regulation directs eircom to effect pricing on circuits migrated under the initial bulk migration process on a date X days prior to the finally agreed or directed migration implementation date. X is defined as the number of days from 17th February 2003 to the actual date on which an appropriately priced product becomes available.

Appendix - List of Directions

For ease of reference, the following sets out a list of Directions set out in this Decision Notice

Direction 3.0.1

The Commission for Communications Regulation directs eircom to remedy the breach of Direction 3.4.1 of Decision Notice D17/02 as a matter of urgency by resubmitting its pricing submission for the elements of connection, disconnection and recurring charges for the Partial Private Circuits product and demonstrating to the Commission for Communications Regulation by 10th March 2003 that its prices for PPCs are fully cost justified on a LRIC basis and are consistent with the computation of conveyance rates.

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